IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:06.07.2006

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM
AND
THE HON'BLE MR. JUSTICE V. DHANAPALAN

WRIT APPEAL No.769 OF 2006
AND MP.NO.3 of 2006
..

1. P. Kathirvel
2. K. Kanagaraj
3. K. Dhandapani
4. P. Periyasamy
5. K. Ponnusamy
6. K. Kandasamy .. Appellants

vs.

1. Thangavel

2. The Special Commissioner and
   Commissioner of land Administration
   Chepauk, Chennai 600 005.

3. The District Collector
   Erode District, Erode 11. .. Respondents

Writ Appeals filed under Clause 15 of the Letters of Patent against the order of the learned Judge Mr. Justice F.M. Ibrahim Kalifulla, dated 10.04.2006 made in W.P.No.9902 of 2006.

For appellants :Mr. K.M. Vijayan, Sr. Counsel
for Mr. N. Manokaran

For respondents :Mr.D. Krishnakumar for R.1

Mr. K. Elango
Spl. Govt., Pleader for R2 & R3
..

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JUDGMENT

(Judgment of the Court was delivered by P. SATHASIVAM,J.)

By consent of all the parties, the main writ appeal itself is taken up for final disposal.

2. Aggrieved by the order of the learned single Judge dated 10.04.2006 made in W.P.No.9902 of 2006, the appellants / third parties, after obtaining leave, filed the above writ appeal.

3. Heard Mr. K.M. Vijayan, learned senior counsel for the appellants, Mr. D. Krishnakumar, learned counsel for the first respondent and Mr. K. Elango, learned Special Government Pleader for respondents 2 and 3.

4. According to the learned senior counsel, the appellants are aggrieved by the direction of the learned single Judge to the District Collector, Erode, to enforce the order dated 21.10.2005 of the Special Commissioner and Commissioner of Land Administration, Chepauk, Chennai 600 005, since the said order was passed by the authority behind their back, without giving an opportunity to them. In other words, according to the learned senior counsel, the learned single Judge ought not to have directed the District Collector, Erode to implement the said direction, which was passed without notice to the appellants.

4. On the other hand, Mr. D. Krishnakumar, learned counsel appearing for the first respondent and Mr. K. Elango, learned Special Government Pleader appearing for respondents 2 and 3 contended that since the appellants are encroachers who are taking water from the canal using diesel engines, the order of the Special Commissioner and Commissioner of Land Administration and the direction of the learned single Judge are perfectly in order and there is no ground for interference.

5. In order to understand the matter in issue, it is useful to refer the order of the Special Commissioner and Commissioner of Land Administration, Chennai 600 005 made in Revision Petition dated 25.04.2004. The said revision petition was filed by one K.Ramasamy and Rasappan of Anaipalayam in Velampoondi Village of Dharapuram Taluk against the order passed by the District Revenue Officer in his proceedings dated 20.04.2004, wherein the District Revenue Officer, Erode held that the pathway in Survey No.56/1 is a private one and thereby ordered to remove the pathway as found in the FMB of Survey No.56/1 and set aside the order of the Revenue Divisional Officer, Dharapuam dated 27.8.1996. There is no need to go into the entire discussion made by the Special Commissioner and Commissioner of Land Administration and it is enough to refer the penultimate paragraph of the order wherein the Commissioner of Land

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Administration, after finding that there is no valid reason to interfere with the order of the District Revenue Officer in his proceedings dated 20.04.2004, rejected the revision as devoid of merits. However, the grievance of the appellants is with regard to the directions issued by the Commissioner of Land Administration in the last paragraph of the order, which reads as under:

> "During the course of hearing, it was deposed by the Village Administrative officer, Velampoondi that in S.No.55 there are some illegal encroachments by way of pipelines in the banks of Amaravathi river and illicit drawal of water is being made through oil engines/electric motors and a list of such offenders have been furnished by him. The Collector of Erode, is therefore, requested to evict these encroachments and their permits should be cancelled forthwith and the water course poramboke restored to its original status immediately. "

6. Since the above said direction in the order dated 21.10.2005 has not been implemented, the first respondent herein, viz., Thangavel, filed W.P.No.9902 of 2006, praying to issue a writ of mandamus directing the second respondent - District Collector, Erode to implement the direction of the Commissioner of Land Administration in his order dated 21.10.2005, by removing the encroachments on the banks of Amaravathi river and water course poramboke lands in S.No.55 of Velampoondi Village and restoring the water course to its original status.

7. When the above writ petition came up for admission on 10.04.2006, the learned single Judge, directed the second respondent therein / District Collector, Erode to enforce the direction of the first respondent within a period of six weeks from the date of receipt of copy of the order. A perusal of the direction of the Commissioner of Land Administration dated 21.10.2005 as well as the order of the learned single Judge dated 10.04.2006, show that the appellants / third parties, who are alleged to have encroached and laid pipelines on the banks of Amaravathi river and drew water illicitly, were not heard. No doubt, there is no need to show concession or indulgence to the encroachers; however, in view of the subject matter of the revision before the Commissioner of Land Administration and of the assertion of the appellants that they are not encroachers of Survey No.55 and they are patta holders in respect of the said land and they are drawing water for the past 35 years, we are of the view that the appellants are entitled to notice of hearing before any order is passed against them. It is made clear that we are not deciding the claim of any of the parties, nor accepting the stand of the appellants that they are patta holders drawing water legally from the river. It is further made clear that it is for the authority concerned to decide all the issues. Accordingly, modifying the order of the learned

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single Judge dated 10.04.2006, we issue the following direction:

> "The Revenue Divisional Officer, Dharapuram is directed to conduct fresh enquiry with reference to the directions issued in the last paragraph of the order of the special Commissioner and Commissioner of Land Administration in R.Dis.(T2) 20229/04 dated 21.10.2005, after affording opportunity to the appellants, first respondent and all other persons connected with the same and pass appropriate orders in accordance with law within a period of three months from the date of receipt of copy of this order. It is made clear that depending on the outcome of the fresh enquiry, the revenue officials are free to take appropriate action."

The writ appeal is ordered accordingly. No costs. Consequently, connected MP., is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Special Commissioner and
   Commissioner of land Administration
   Chepauk, Chennai 600 005.

2. The District Collector
   Erode District, Erode 11.

+1cc to Mr.D.Krishnakumar, Advocate Sr 28933

MAB (CO)
km/11.7.

Writ Appeal No.769 /2006.

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